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HUMAN RIGHTS COMMITTEE
Seventy-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OVERSEAS TERRITORIES OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Part I

1. The Committee considered the fifth periodic report submitted by the United Kingdom of Great Britain and Northern Ireland (CCPR/C/UK/99/5) and the fourth and fifth combined report on the Overseas Territories of the United Kingdom and Northern Ireland (CCPR/C/UKOT/5) at its 1960th to 1963rd meetings, held on 17 and 18 October 2001. The Committee adopted the following concluding observations at its 1976th and 1977th meetings, held on 29 October 2001.

Introduction

2. The Committee has examined the reports of the United Kingdom of Great Britain and Northern Ireland, and on the Overseas Territories of the United Kingdom of Great Britain and Northern Ireland. The Committee appreciates the extensive supplementary report covering events since the submission of the primary report and the responses, provided in advance, to the Committee's written questions. The Committee regrets that the State party's supplementary report was submitted at a late stage and was available in one working language only. In

particular, the Committee commends the inclusion in the State party's responses of a comprehensive account of the legal and practical actions taken to follow up on each of the Committee's concluding observations on the consideration of the previous report. In respect of the overseas territories, the Committee regrets that it did not receive the entirety of the documentation referred to in the corresponding report, which prevented Committee members from fully examining the report.

Part II

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Positive aspects

3. The Committee welcomes the entry into force of the Human Rights Act 1998. The Committee considers the resulting enhanced judicial scrutiny of executive and legislative action, and the legal duty placed upon the authorities to act consistently with rights which are similar in substance to many Covenant rights, to be an important step towards ensuring compliance with, and remedies for breaches of, those Covenant rights.

4. The Committee welcomes the conclusion of the Belfast Agreement in April 1998 and the changes adopted in Northern Ireland, based upon the agreement, as the State party and other signatories have sought to move away from the extraordinary measures in place in that jurisdiction towards higher promotion of respect for human rights and fundamental freedoms. In particular, the Committee commends the establishment of an independent Police Ombudsman with jurisdiction over complaints in regard to all uses of force on the part of the police and with significant powers of investigation and enforcement, as well as the creation of a Human Rights Commission in Northern Ireland. Consonant with these developments, the Committee also welcomes the State party's recent withdrawal of its notice of derogation relating to article 9, paragraph 3, of the Covenant.

5. The Committee also welcomes the extension of the Race Relations Act to cover all public bodies, and the adoption of a Disability Discrimination Act.

Principal subjects of concern and recommendations

6. The Committee notes with concern that the State party, in seeking inter alia to give effect to its obligations to combat terrorist activities pursuant to Security Council resolution 1373 (2001), is considering the adoption of legislative measures which may have potentially far-reaching effects on rights guaranteed in the Covenant and which, in the State party's view, may require derogations from human rights obligations.

The State party should ensure that any measures it undertakes in this regard are in full compliance with the provisions of the Covenant, including, when applicable, the provisions on derogation contained in article 4 of the Covenant.

7. The Committee regrets that the State party, while having incorporated many Covenant rights into its domestic legal order through the Human Rights Act 1998, has failed to accord the same level of protection to other Covenant rights, including the provisions of articles 26 and 27.

The State party should consider, as a matter of priority, how persons subject to its jurisdiction may be guaranteed effective and consistent protection of the full range of Covenant rights. It should consider, as a priority, accession to the first Optional Protocol.

8. The Committee is deeply disturbed that, a considerable time after murders of persons (including human rights defenders) in Northern Ireland have occurred, a significant number of such instances have yet to receive fully independent and comprehensive investigations, and the persons responsible to be prosecuted. This phenomenon is doubly troubling where persistent allegations of involvement and collusion by members of the State party's security forces, including the Force Research Unit, remain unresolved.

The State party should implement, as a matter of particular urgency given the passage of time, the measures required to ensure a full, transparent and credible accounting of the circumstances surrounding violations of the right to life in Northern Ireland in these and other cases.

9. Although the Committee appreciates the establishment of specialist bodies to deal with various specific areas of discrimination, such as the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission, the Committee considers that the establishment of a national human rights commission with comprehensive jurisdiction to receive complaints of human rights violations would be a valuable addition to the remedies available to persons complaining of such violations, particularly persons for whom recourse to the courts is, as a practical matter, too costly, difficult or impossible.

The State party should consider the establishment of a national human rights commission to provide and secure effective remedies for alleged violations of all human rights under the Covenant.

10. The Committee is concerned at the State party's maintenance of an old law that convicted prisoners may not exercise their right to vote. The Committee fails to discern the justification for such a practice in modern times, considering that it amounts to an additional punishment and that it does not contribute towards the prisoner's reformation and social rehabilitation, contrary to article 10, paragraph 3, in conjunction with article 25 of the Covenant.

The State party should reconsider its law depriving convicted prisoners of the right to vote.

11. Although the Committee appreciates the introduction of new criminal offences of racially aggravated violence, harassment or criminal damage, it is deeply disturbed by the recent repeated

violent outbreaks of serious race and ethnicity-based rioting and associated criminal conduct in some major cities. These incidents seriously affected the enjoyment of rights under articles 9 and 26 of many persons of different ethnic groups.

The State party should continue to seek to identify those responsible for these outbreaks of violence, and to take appropriate measures under its law. It should also work to facilitate dialogue between communities and between community leaders, and to identify and remedy the causes of racial tension in order to prevent such incidents in the future.

The State party should also consider facilitating inter-political party arrangements to ensure that racial tension is not inflamed during political campaigns.

12. The Committee is disturbed at the sharply increased number of racist incidents within the criminal justice system, particularly those reported as having been committed by police and prison staff against inmates. Racist violence between prisoners inappropriately located together has also resulted in serious violations of prisoners' rights under the Covenant, including at least one case of murder.

The State party should encourage the transparent reporting of racist incidents within prisons and ensure that racist incidents are rapidly and effectively investigated. It should ensure that appropriate disciplinary and preventive measures are developed to protect those persons who are particularly vulnerable To this end, the State party should pay particular attention to improving the representation of ethnic minorities within the police and prison services.

13. Although the Committee appreciates that a number of improvements over the reporting period in the representation of ethnic minorities in various walks of public life, as well as the extension in the Race Relations (Amendment) Act 2000 of a positive duty to certain public bodies to promote racial equality, the Committee remains concerned at the disproportionately low levels of participation by members of minority groups in government and the civil service, particularly the police and prison service.

The State party should take appropriate measures to ensure that its public life better reflects the diversity of its population.

14. The Committee is concerned at reports that, since recent terrorist attacks, persons have been the subject of attack and harassment on the basis of their religious beliefs and that religion has been utilized to incite to the commission of criminal acts. The Committee is also disturbed that incidents of violence and intimidation on the basis of religious affiliation in Northern Ireland continue to occur.

The State party should extend its criminal legislation to cover offences motivated by religious hatred and should take other steps to ensure that all persons are protected from discrimination on account of their religious beliefs.

15. The Committee notes that, despite recent improvements, the proportions of women participating in public life, particularly at senior levels of the executive and judiciary and in Parliament, and also in the private sector, remain at low levels.

The State party should take necessary steps towards achieving an appropriate representation of women in these fields.

16. The Committee is concerned that asylum-seekers have been detained in various facilities on grounds other than those legitimate under the Covenant, including reasons of administrative convenience. In any event, the Committee considers unacceptable any detention of asylum-seekers in prisons. The Committee notes, moreover, that asylum-seekers, after final refusal of their request, may also be held in detention for an extended period when deportation might be impossible for legal or other considerations. The Committee is also concerned that the practice of dispersing asylum-seekers may have adverse effects on their ability to obtain legal advice and upon the quality of that advice. Dispersal, as well as the voucher system of support, have on occasion led to risks for the physical security of asylum-seekers.

The State party should closely examine its system of processing asylum-seekers in order to ensure that each asylum-seeker's rights under the Covenant receive full protection, being limited only to the extent necessary and on the grounds provided for in the Covenant. The State party should end detention of asylum-seekers in prisons.

17. Although the Committee appreciates the recent prohibition on drawing negative inferences from a suspect's silence while his or her lawyer is absent, the Committee remains troubled by the principle that juries may draw negative inferences from the silence of accused persons.

The State party should reconsider, with a view to repealing it, this aspect of criminal procedure, in order to ensure compliance with the rights guaranteed under article 14 of the Covenant.

18. The Committee remains concerned that, despite improvements in the security situation in Northern Ireland, some elements of criminal procedure continue to differ between Northern Ireland and the remainder of the State party's jurisdiction. In particular, the Committee is troubled that, under the so-called "Diplock court" system in Northern Ireland, persons charged with certain "scheduled offences" are subject to a different regime of criminal procedure, including the absence of a jury. That modified procedure applies unless the Attorney-General certifies, without having to justify or explain, that the offence is not to be treated as a scheduled offence. The Committee recalls its interpretation of the Covenant as requiring that objective and reasonable grounds be provided by the appropriate prosecution authorities to justify the application of different criminal procedure in particular cases.

The State party should carefully monitor, on an ongoing basis, whether the exigencies of the specific situation in Northern Ireland continue to justify any such distinctions. In particular, it should ensure that, in each case where a person is

subjected to the "Diplock" jurisdiction, objective and reasonable grounds are provided and that this requirement is incorporated in the relevant legislation (including the Northern Ireland (Emergency Provisions) Act 1996).

19. The Committee notes with concern that, under the general Terrorism Act 2000, suspects may be detained for 48 hours without access to a lawyer if the police suspect that such access would lead, for example, to interference with evidence or alerting another suspect. Particularly in circumstances where these powers have not been used in England and Wales for several years, where their compatibility with articles 9 and 14 inter alia is suspect, and where other less intrusive means for achieving the same ends exist, the Committee considers that the State party has failed to justify these powers.

The State party should review these powers in the light of the Committee's views.

20. The Committee is concerned that provisions of the Criminal Procedure and Investigations Act 1996 enable prosecutors to seek a non-reviewable decision by a court to the effect that sensitive evidentiary material, which would otherwise be disclosed to a defendant, is withheld on public interest/immunity grounds. The Committee considers that the State party has failed to demonstrate the necessity of these arrangements.

The State party should review these provisions in the light of the Committee's remarks and previous concluding observations in respect of article 14, in order to ensure that the guarantees of article 14 are fully respected.

21. The Committee is concerned that powers under the Official Secrets Act 1989 have been exercised to frustrate former employees of the Crown from bringing into the public domain issues of genuine public concern, and to prevent journalists from publishing such matters.

The State party should ensure that its powers to protect information genuinely related to matters of national security are narrowly utilized and limited to instances where it has been shown to be necessary to suppress release of the information.

Part III

OVERSEAS TERRITORIES OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

22. The Committee welcomes the abolition of the death penalty for all offences in all of the overseas territories; it notes its retention in the Turks and Caicos Islands for piracy and treason.

23. The Committee is deeply concerned that the protection of Covenant rights in the overseas territories is weaker and more irregular than in the metropolitan area. The Committee regrets that the provisions of the Human Rights Act 1998, which significantly improve the protection of many rights contained in the Covenant, do not extend to the overseas territories (except, to some extent, Pitcairn and St Helena). The Committee regrets that the Covenant rights are not incorporated in the legislation of the territories, and that its provisions cannot be invoked directly

before or applied by the judiciary. The consequences are especially regrettable in those overseas territories (British Virgin Islands, Cayman Islands, St. Helena and Pitcairn) whose Constitutions do not contain chapters on fundamental rights. In this regard, the Committee would welcome answers to the questions not dealt with by the delegation.

The State party should give priority to incorporating Covenant rights in the respective domestic legal orders of the overseas territories.

24. The Committee is concerned at the absence throughout the overseas territories of appropriate training on the Covenant for public officials, a situation recognized by the State party.

The appropriate authorities should establish programmes of training and education for their public officials, aimed at inculcating a human rights culture in these persons who exercise governmental powers in the various overseas territories.

Positive aspects, principal subjects of concern and recommendations

Bermuda

25. The Committee welcomes the establishment of the Human Rights Commission of Bermuda, with powers of investigation, prosecution, conciliation and education.

British Virgin Islands

26. The Committee appreciates the elimination of constitutional rules inconsistent with articles 3 and 26 of the Covenant which discriminated between the rights accorded to spouses of male and female British Virgin Islanders.

Cayman Islands

27. The Committee appreciates the passage of the Youth Justice Law providing a regime for juvenile offenders, which focuses on the specific needs of that group.

28. The Committee is concerned that the categories of persons for whose deportation Cayman law provides, in particular "undesirable" or "destitute" persons, are defined in terms that are vague and unclear, and that deportation of such persons may violate articles 17 and 23 of the Covenant. Moreover, the Committee considers that, since deportation occurs pursuant to an order issued by the Governor after having considered a magistrate's report, there is insufficient review of the appropriateness of such a measure in terms of article 13.

The State party should review its law on deportation to provide clear criteria, and effective and impartial review of any deportation decision, in order to ensure compliance with articles 17, 23 and 26.

Falkland Islands/Malvinas

29. The Committee welcomes the enactment of the Race Relations Ordinance 1994 (adopting the provisions of the Race Relations Act 1974 (UK)) and the Sex Discrimination Act 1998, aimed at eliminating discrimination on the grounds of race and sex.

30. The Committee is concerned that, while "seek[ing] to remove any avoidable discrimination against, or stigma attaching to, children born outside of marriage", the Family Law Reform Ordinance does not abolish the status of illegitimacy. The Committee also considers that the absence of any right of compensation, in the circumstances of article 14, paragraph 6, of the Covenant, violates that provision.

The State party should amend these aspects of its law to bring them into line with its obligations under article 24, taken together with article 26, and under article 14 of the Covenant.

Gibraltar

31. The Committee appreciates the Domestic Violence and Matrimonial Proceedings Act 1998 and the Maintenance (Amendment) Ordinance 1998, which provide protection orders and exclusion orders for vulnerable parties in matrimonial relationships.

Montserrat

32. The Committee commends the State party for its emphasis on maintaining observance of its human rights obligations despite the volcanic eruptions of 1995, 1996 and 1997. In particular, the Committee commends the holding of elections for the Legislative Council in October 1996.

33. The Committee is concerned over the situation of long-term prisoners, who have had to serve sentences in other overseas territories.

The State party should ensure that, consistent with articles 10, 17, 23 and 24 of the Covenant, long-term prisoners may serve their sentences in its territory; alternatively, it should investigate non-custodial means of punishment.

St. Helena

34. The Committee takes note of the adoption of Public Order Ordinance 1997, providing an up-to-date legal scheme governing public processions and assemblies. The Committee also appreciates the appointment of a Public Solicitor in 1998, providing free legal advice, assistance or representation to persons so requiring.

35. The Committee is concerned at the mixing of accused and convicted prisoners, especially since St. Helena is not one of the overseas territories to which a reservation to article 10, paragraph 2 (a), of the Covenant has been applied.

The State party should ensure that accused and convicted prisoners are appropriately segregated.

Turks and Caicos Islands

36. The Committee takes note of the construction and opening of a new detention facility, with female prisoners wholly segregated from male prisoners and supervised by female staff. It appreciates the sharp drop in infant mortality (from 30 per cent to 13 per cent over two years), following the adoption of a series of primary health measures.

37. The Committee is concerned that in the Turks and Caicos Islands, alone among the overseas territories, capital punishment for the offences of treason and piracy has been retained. It considers that such retention may raise issues under article 6 of the Covenant, particularly since the death penalty has been abolished for the offence of murder.

The State party should take the necessary steps to abolish the death penalty for treason and piracy.

British Indian Ocean Territory

38. Although this territory was not included in the State party's report (and the State party apparently considers that, owing to an absence of population, the Covenant does not apply to this territory), the Committee takes note of the State party's acceptance that its prohibition of the return of Ilois who had left or been removed from the territory was unlawful.

The State party should, to the extent still possible, seek to make exercise of the Ilois' right to return to their territory practicable. It should consider compensation for the denial of this right over an extended period. It should include the territory in its next periodic report.

Part IV

39. The State party should publicize the text of its fifth periodic reports, the written answers it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations.

40. The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding the State party's policy and practice contained in paragraphs 6, 8, 11 and 23 above. The Committee requests that information concerning the remainder of its recommendations be included in its sixth periodic reports, to be submitted by 1 November 2006.